THE EPIDEMIOLOGY OF COLOR-BLINDNESS: LEARNING TO THINK AND TALK ABOUT RACE, AGAIN†

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It is 1948. I am sitting in a kindergarten classroom at the Dalton School, a fashionable and progressive New York City private school. My parents, both products of a segregated Mississippi school system, have come to New York to attend graduate and professional school. They have enrolled me and my sisters here at Dalton to avoid sending us to the public school in our neighborhood where the vast majority of the students are black and poor. They want us to escape the ravages of segregation, New York style.

It is circle time in the five-year-old group, and the teacher is reading us a book. As she reads, she passes the book around the circle so that each of us can see the illustrations. The book's title is *Little Black Sambo.* Looking back, I remember only one part of the story, one illustration: Little Black Sambo is running around a stack of pancakes with a tiger chasing him. He is very black and has a minstrel's white mouth. His hair is tied up in many pigtails, each pigtail tied with a different color ribbon. I have seen the picture before the book reaches my place in the circle. I have heard the teacher read the "comical" text describing Sambo's plight and have heard the laughter of my classmates. There is a knot in the pit of my stomach. I feel panic and shame. I do not have the words to articulate my feelings—words like "stereotype" and "stigma" that might help cathart the shame and place it outside of me where it began. But I am slowly realizing that, as the only black child in the circle, I have some kinship with the tragic and ugly hero of this story—that my classmates are laughing at me as well as at him. I wish I could laugh along with my friends. I wish I could disappear.

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I am in a vacant lot next to my house with black friends from the neighborhood. We are listening to *Amos and Andy* on a small radio and laughing uproariously. My father comes out and turns off the radio. He reminds me that he disapproves of this show that pokes fun at Negroes. I feel bad—less from my father's reprimand than from a sense that I have betrayed him and myself, that I have joined my classmates in laughing at us.

I am certain that my kindergarten teacher was not intentionally racist in choosing *Little Black Sambo.* I knew even then, from a child's intuitive sense, that she was a good, well-meaning person. A less benign combination of racial mockery and profit motivated the white men who produced the radio show and played the roles of Amos and Andy. But we who had joined their conspiracy by our laughter had not intended to demean our race.

A dozen years later I am a student at Haverford College. Again, I am a token black presence in a white world. A companion whose face and name I can't remember seeks to compliment me by saying, "I don't think of you as a Negro." I understand his benign intention and accept the compliment. But the knot is in my stomach again. Once again, I have betrayed myself.

This happened to me more than a few times. Each time my interlocutor was a good, liberal, white person who intended to express feelings of shared humanity. I did not yet understand the racist implications of the way in which those feelings were conceptualized. I am certain that my white friends did not either. We had not yet grasped the compliment's underlying premise: To be thought of as a Negro is to be thought of as less than human. We were all victims of our culture's racism. We had all grown up on *Little Black Sambo* and *Amos and Andy.*

Another ten years pass. I am thirty-three. My daughter, Maia, is three. I greet a pink-faced, four-year-old boy on the steps of her nursery school. He proudly presents me with a book he has brought for his teacher to read to the class. "It's my favorite," he says. The book is a new edition of *Little Black Sambo.*

It has been almost ten years since I first told this story. Some of you have heard the story before. It appears in the prologue of my 1987 Stanford Law Review article on unconscious racism.[1] I tell it again today because there are always new lessons in stories, as well as old ones that have new meanings in different times and places. I have wanted to revisit this work for some time now, to think about why it is that we

[1] Charles R. Lawrence, III, *The Id, the Ego and Equal Protection: Reckoning with Unconscious Racism,* 39 STAN. L. REV. 317 (1987).

continue to be so confused in the way we think and talk about race and racism. As I began to prepare this talk, I returned to the Stanford article and to this story and found there an old lesson and a new one.

The old lesson was the subject of the Stanford article.[2] It is a lesson about the ubiquity of the disease of racism in this country where, even in the most benign of settings, our children learn the lessons of white supremacy.

The new lesson is one that tries to explain why the disease of racism continues to flourish and spread despite our professed commitment to its eradication. If racism is a societal disease, how might an epidemiologist investigate the mechanisms by which it remains virulent? What phenomena would she identify? What cultural practices contribute to its spread? Are there patterns of behavior that are analogous to those found in other epidemics?

My intuition, my hypothesis, is that an important phenomenon contributing to racism's resistance to cure is a condition that I call "color-blindness".[3] The primary mechanism by which "color-blindness" sustains itself is denial. The cultural practice that enables and sustains this denial is a societal taboo against honest talk about what we see, feel, and know about racism.[4]

First, a brief review of the old lesson.

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"The Id, The Ego, and Equal Protection: Reckoning With Unconscious Racism"[5] was a critique of the constitutional doctrine of discriminatory purpose. This doctrine, first established in the 1976 decision of *Washington v. Davis*,[6] requires plaintiffs challenging the racist effect of

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[2] This article is a critique of the doctrine of discriminatory purpose established by the Supreme Court decision of *Washington v. Davis*, 426 U.S. 229 (1976). That case required plaintiffs to affirmatively show intentional racial discrimination in order prove a violation of the Equal Protection Clause. This article argues that such a requirement ignores much of what we understand about human psychology and about the profound effect of our history on the individual and collective unconscious of the American people. *See infra* notes 5–9 and accompanying text.

[3] In employing the medical metaphors of epidemiology and disease I run the risk of using language that perpetuates and participates in an ideology that subordinates differently-abled people and treats them as if they were sick and in need of cure. A blind graduate student at Brandeis listened to an earlier version of this talk and brought this risk to my attention. I am indebted to her for this insight and grateful for her honesty and care in speaking to me about my own insensitivity to this issue.

[4] *See* CORNEL WEST, RACE MATTERS 1–8 (1993) (arguing that race is a taboo subject in America). *See generally* Kimberlé Williams Crenshaw, *Foreword: Toward a Race-Conscious Pedagogy in Legal Education*, 11 NAT'L. BLACK L.J. 1 (1989) (discussing how the taboo surrounding race affects legal education); RACE-ING JUSTICE, EN-GENDERING POWER: ESSAYS ON ANITA HILL, CLARENCE THOMAS, AND THE CONSTRUCTION OF SOCIAL REALITY (Toni Morrison ed., 1992).

[5] Lawrence, *supra* note 1.

[6] 426 U.S. at 239.

a facially neutral law to prove a racially discriminatory purpose on the part of those responsible for the law's enactment or administration.[7]

I argued that requiring proof of conscious or intentional motivation as a prerequisite to constitutional recognition that a decision is race-dependent ignores much of what we understand about how the human mind works. It disregards both the irrationality of racism and the profound effect that the history of American race relations has had on the individual and collective unconscious.

Americans share a common historical and cultural heritage in which racism has played, and still plays, a dominant role. Because of this shared heritage, we also inevitably share many ideas, attitudes, and beliefs that attach significance to an individual's race and induce negative feelings and opinions about non-whites. To the extent that this cultural belief system has influenced us all, we are all racists. At the same time most of us are unaware of our racism. We do not recognize the ways in which our cultural experience has influenced our beliefs about race or the occasions on which those beliefs affect our actions. In other words, a large part of the behavior that produces racial discrimination is influenced by unconscious racial motivation.[8]

As a law professor challenging the Supreme Court's intent doctrine, my chief purpose in writing the Stanford article was to demonstrate that the professed purposes of the equal protection clause could not be fulfilled if only actions motivated by conscious racial bias violated the Constitution.[9] My analysis remained largely within the framework of existing equal protection doctrine and theory, a doctrine and theory dominated by concern for formal equality.[10]

But the article was also part of a larger and more important project. This is the project of anti-racism, of anti-subordination, and human liberation. I hoped that I could make some small contribution to that project by helping my readers better understand the disease that is American racism. I wanted to convey how we all participate in

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[7] *Id.*

[8] Lawrence, *supra* note 1, at 322.

[9] It was my expectation that my readers would be limited to a small group of Constitutional scholars whose primary concern was interpreting and occasionally shaping judicial decisions. With hindsight, I think the article is overly influenced by my anticipation of the concerns of that readership. I was pleasantly surprised when the article found a significant audience beyond these rather narrow confines.

[10] *See generally* Alan David Freeman, *Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 MINN. L. REV. 1049 (1978) (discussing the way in which the Equal Protection doctrine focuses on the fit between means and ends rather than on achieving substantive equality). *See also* JOHN HART ELY, DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW (1980).

the transmission and internalization of racist cultural symbols that inflict dehumanizing psychic injury, how we act on those meanings to produce and maintain institutional and structural racism,[11] how we are all dehumanized by these mutually reinforcing symbols, acts, institutions, and structures. This is the old lesson in the story.

The new lesson has the same purpose as the old. It is part of the same project. I ask the epidemiologist's questions. Why does this disease continue to flourish and spread? I have identified the phenomenon of "color-blindness" as one cause. The origin of color-blindness is benign. We see it first in Justice Harlan's dissent in *Plessy v. Ferguson.*[12] "The Constitution is color-blind. . ." he said.[13] He was obviously stating an ideal, a mandate, a standard against which the Constitution will judge the state of affairs in a racist world. It is, after all, Justice Harlan who first articulated the central lesson of *Brown v. Board of Education*[14] when he said in *Plessy* that the "real meaning" of segregation is "that colored citizens are so inferior and degraded that they cannot be allowed to sit in public coaches occupied by white citizens."[15]

It was not until well after *Brown* established Justice Harlan's dissent as the law of the land that color-blindness was transformed from a healing prescription into a carrier of the disease itself.[16] If the equal protection clause required the disestablishment of racist meanings,

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[11] For examples of scholarship describing institutional and structural racism, see Crenshaw, *supra* note 4 (racism in law schools); DERRICK A. BELL, JR., RACE, RACISM AND AMERICAN LAW, 712–27 (3d ed. 1992) (racism in labor markets and housing markets); JONATHAN KOZOL, SAVAGE INEQUALITIES: CHILDREN IN AMERICA'S SCHOOLS (1991) (racism in education); STEPHEN J. GOULD, THE MISMEASURE OF MAN (1981) (racism in biology).

[12] 163 U.S. 537, 552 (1896) (Harlan, J., dissenting).

[13] "Our Constitution is color-blind, and neither knows nor tolerates classes among citizens." *Id.* at 559 (Harlan, J., dissenting).

[14] 347 U.S. 483, 495 (1954). *See* Charles L. Black, Jr., *The Lawfulness of the Segregation Decisions,* 69 YALE L.J. 421 (1960) (arguing that in *Brown,* the Court should have held that segregation violates the Equal Protection Clause because of its caste-reinforcing purpose, not because segregation psychologically harms black children). See also Lawrence, *supra* note 1, at 362–63 (arguing that the stigmatizing "cultural meaning" of segregation makes it inherently violative of equal protection).

[15] *Plessy,* 163 U.S at 560 (Harlan, J., dissenting); *see also* T. Alexander Aleinikoff, *Re-reading Justice Harlan's Dissent in Plessy v. Ferguson: Freedom, Antiracism and Citizenship,* 1992 U. ILL. L. REV. 961, 969 (1992). Aleinikoff argues that Harlan did not view racial classifications to be the constitutional violation in *Plessy;* rather, Harlan believed that segregation laws violate Equal Protection because they are assertions of white supremacy.

[16] *See generally* Freeman, *supra* note 10 (arguing that civil rights law in the twenty-five years after *Brown* has served more to rationalize the continuing effects of racial discrimination, than to produce any genuine liberation from race and class oppression). *See also* Bell, *supra* note 11; Kimberlé Williams Crenshaw, *Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law,* 101 HARV. L. REV. 1331 (1988); Neil Gotanda, *A Critique of "Our Constitution is Colorblind,"* 44 STAN. L. REV. 1 (1991).

practices and institutions, that disestablishment could not occur without giving affirmative attention to those meanings and practices. This is the meaning of affirmative action. One cannot desegregate a segregated school by ignoring the race of those seeking admission.[17] But affirmative action made it apparent that one could not achieve equal opportunity without some redistribution of opportunity.[18] Of course this redistribution was resisted. The resistance took the form of anti-affirmative action politics and what became known as "reverse discrimination" litigation.[19] The transformation of color-blindness from prescriptive ideal into a condition of societal denial first appeared in these anti-affirmative action cases and in the politics that created those cases.[20]

The transformation is achieved by the assertion that Justice Harlan's ideal has now become real. "Our Constitution is color-blind" becomes "We are a color-blind society."[21] Such an assertion can only be believed if we engage in massive denial of what we see and hear every day. Thus when the Supreme Court struck down the Richmond Virginia minority set-aside program in *Croson*,[22] the majority opinion found that there was "no direct evidence of race discrimination [against minority contractors] on the part of the city. . . or any evidence that the city's prime contractors had discriminated against mi-

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[17] *See, e.g.*, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1 (1971); *see also* Regents of Univ. of Cal. v. Bakke, 438 U.S. 265, 324 (1978) (Brennan, J., dissenting); Bakke v. Regents of the Univ. of Cal., 553 P.2d 1152, 1156 (1976) (Tobriner, J., dissenting).

[18] For a general discussion of how affirmative action functions to redistribute opportunity, see WEST, *supra* note 4, at 63–67. *See also* Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1710 (1993) (arguing that affirmative action programs can best be defended by a principle of distributive justice).

[19] *See Bakke*, 438 U.S. at 265; City of Richmond v. J.A. Croson, 488 U.S. 469 (1989); DeFunis v. Odegaard, 416 U.S. 312 (1974) (the forerunner of *Bakke*).

[20] *See* CHARLES R. LAWRENCE III & JOEL DREYFUSS, THE BAKKE CASE: THE POLITICS OF INEQUALITY 141–61 (1979).

[21] Justice Powell's opinion in *Bakke* noted:

> [I]t was no longer possible to peg the guarantees of the Fourteenth Amendment to the struggle for equality of one racial minority. During the dormancy of the Equal Protection Clause, the United States had become a Nation of minorities. Each had to struggle—and to some extent struggles still—to overcome the prejudices not of a monolithic majority, but a 'majority' composed of various minority groups of whom it was said—perhaps unfairly in many cases—that a shared characteristic was a willingness to disadvantage other groups. (citations omitted).

Bakke, 438 U.S. at 292; Also see Justice O'Connor's opinion in *Croson*: "The dissent's watered-down version of equal protection review effectively assures that race will always be relevant in American life, and that the 'ultimate goal' of 'eliminating entirely from governmental decision-making such irrelevant factors as a human being's race' will never be achieved." *Croson*, 488 U.S. at 495 (citing Wygant v. Jackson Board of Education, 476 U.S. 267 (1986)).

[22] 488 U.S. at 469.

nority-owned subcontractors."[23] The Court's majority blinds itself to Richmond's history of slavery and segregation.[24] It refuses to see the city's still segregated neighborhoods and segregated schools. The Justices deny their own life experiences in clubs, communities and jobs where blacks are rarely seen.[25] And if these realities are brought to their attention they say, "but this is not evidence,"[26] or "this is economics,

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[23] *Id.* at 480.

[24] In his *Croson* dissent, Justice Marshall describes the extended history of Richmond's discriminatory practices. *Id.* at 544–46 (Marshall, J., dissenting); *see also* Peter Charles Hoffer, *"Blind to History:" The Use of History in Affirmative Action Suits: Another Look at City of Richmond v. J.A. Croson Co.*, 23 RUTGERS L.J. 270, 278–79 (1992). Hoffer, an historian, argues that courts should use "humanistic historical reasoning" rather than the categorical historical analysis employed by the Court in *Croson*. Categorical historical analysis seeks to narrow the historical record and context of a case, while humanistic historical reasoning situates cases within a more expansive and wider historical and social context. Professor Hoffer summarizes the historical record of discrimination against African-American contractors in Richmond:

> The majority of the City Council knew and the federal courts were told that non-minority contractors had for a century prevented African-American craftsmen from becoming businessmen, refusing them loans and finding other ways to keep them out of the larger marketplace (servicing the African-American market was permitted), while using their labor. From the moment of the emancipation of slaves in Richmond, African-American craftsmen had proven themselves able and successful workmen. Richmond was built, repaired, and rebuilt by minority labor. They had joined eagerly in the union movement and were strongly committed to economic and political reform. When 'Redeemers' recaptured the government of the City and the state for the Democratic Party, they used the race issue to sever incipient alliances between white and African-American craftspeople and condemned African-American workers to 'low prestige and low paying jobs.' The alliance that was to dominate city government and the awarding of city contracts was that between an old Virginia economic elite and a lily-white city council. While some of this elite circle believed that African Americans ought to be allowed equality in farming and trade pursuits (so long as they were willing to accept Jim Crow laws), there was no place for African-American businessmen outside of the African-American community. That attitude persisted through the end of a white-dominated City Council in 1978 and continues among the white minority of the Council and its supporters in the corporate business community.

Id. at 289–90 (citations omitted).

[25] A full treatment of the background of the individual Justices on the Court is beyond the scope of this paper. Nevertheless, accounts of several Justices point to the their infrequent interaction with African Americans. Justices Anthony Kennedy, Antonin Scalia, and Harry Blackmun, for example, all have been criticized for their membership in historically exclusionary clubs. *See* Katherine Bishop, *Exclusionary Club May Pose Problems for Judge Kennedy*, N.Y. TIMES, Nov. 14, 1987, at A8.

During the nomination process, Chief Justice Rehnquist was sharply criticized for having purchased two homes with racially restrictive covenants and for personally challenging Hispanic and black voters' rights to vote at the polls during the early 1960s. *Valid Doubts about Justice Rehnquist*, N.Y. TIMES, Sept. 11, 1986, at A26; *Justice Knew of Deed in '74*, N.Y. TIMES, Aug. 8, 1986, at A13. *See also* Daniel G. Lugo, *Don't Believe the Hype: Affirmative Action in Large Law Firms*, 11 LAW & INEQ. J. 615 (1993) (discussing the small number of African Americans in large law firms).

[26] Tightly circumscribing the evidence to be examined, O'Connor disparages the city's justification for affirmative action set-asides, asserting that it is based on an "amorphous" and

not race,"[27] or "this is protected racist speech, not conduct,"[28] or "it is not racism when white contractors hire their friends and all of their friends just happen to be white,"[29] or "maybe black folks don't like contracting work."[30] And then they say to those who seek affirmative remedies for this discrimination, "*You* must be a racist if you don't believe we are a color-blind society."[31] These are all forms of denial. The Justices on the Supreme Court are not its only practitioners. Denial is a pervasive symptom of contemporary American racism.

"unsupported" assertion of "societal discrimination." *Croson*, 488 U.S. at 499, 502. For example, statistical evidence offered to support a finding of discrimination—the miniscule percentage of black contractors compared to the number of blacks in Richmond—is excluded on the grounds of being irrelevant. O'Connor also excludes Congressional findings of nationwide discrimination in the construction industry as "extremely limited." *Id.* at 504.

[27] For example, the majority opinion suggests that race-neutral economic barriers in the construction industry are the real problem, not discrimination. *Croson*, 488 U.S. at 507–10. By viewing the problem in *Croson* as economic, rather than racial, the Court prohibits remedies that seek to redistribute opportunity based on race. However, there is a strong argument that a race-neutral economic plan will not be effective in remedying the injuries of past and present discrimination. *See* Martin J. Katz, *The Economics of Discrimination: Three Fallacies of Croson*, 100 YALE L.J. 1033, 1045–48 (1991) (arguing that race-neutral policies will not necessarily benefit victims of discrimination).

[28] R.A.V. v. St. Paul, 112 S. Ct. 2538 (1992) (holding that crossburning is a form of political speech protected by the First Amendment). For a critique of the Court's decision in *R.A.V.*, see Charles R. Lawrence III, *Crossburning and the Sound of Silence: Antisubordination Theory and the First Amendment*, 37 VILL. L. REV. 787 (1992). *See generally* MARI J. MATSUDA ET AL., WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT (1993).

[29] "The city and the District Court also relied on evidence that MBE membership in local contractors' associations was extremely low. Again, standing alone this evidence is not probative of any discrimination in the local construction industry." *Croson*, 488 U.S. at 503; also see Judge Posner's argument that immigrants who hire only among their friends should be exempt from anti-discrimination laws. EEOC v. Consolidated Serv. Sys., 989 F.2d 233, 238 (7th Cir. 1993) ("It would be a bitter irony if the federal agency dedicated to enforcing the antidiscrimination laws succeeded in using those laws to kick these people off the ladder [of American success] by compelling them to institute costly systems of hiring").

[30] *See Consolidated Serv. Sys.*, 989 F.2d at 238. *But cf.* Katz, *supra* note 27, at 1044 (disproving the assertion that blacks prefer working in lower paying industries).

[31] *See* Gary Peller, *Race Consciousness*, 1990 DUKE L.J. 758, 772–79 (1990). Peller argues that the liberal ideology of integration has defined racism to mean the possession of race conscious thinking:

> Anyone can engage in racism because we identify racism from a vantage point of race neutrality, of not making someone's race count for anything. In short, the symmetry of the integrationist picture is rooted in the idea that racism consists of possessing a race consciousness about the world, in thinking that race should make a difference in social relations.

Id. at 773. Columnist Clint Bolick's editorials vilifying Lani Guinier for being conscious of race in America exemplify this ideology. "At bottom, what is most disturbing about Ms. Guinier's views is the pervasiveness of the racial prism through which she views every issue." Clint Bolick, *Role of the Legal Philosophy that Produced Lani Guinier*, WALL ST. J., June 2, 1993, at A15.

This kind of massive denial is not possible unless there is also a strictly enforced taboo against speaking publicly about that which we do not wish to see. In dysfunctional families, where there is alcoholism, abuse, or incest, children and other family members learn that they are not to speak of this behavior to others.[32] Often the behavior is not even spoken of within the family.[33] These taboos may be enforced by threat of further abuse, but they are also enforced by fear of loss of love, or guilt, or a diminished self-worth that leads the child to think he deserves the abuse, or to the child's participation in the denial.[34] Analogous mechanisms serve to enforce the taboo against speaking candidly about what we see and know about racism.

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It is early April of 1994. I am watching the Midwest regional final of the N.C.A.A. basketball championship, fondly known as "The Dance." Michigan is playing Arkansas. The winner will go on to the Final Four. "The Dance" has become a national ritual of sorts. Last year more people watched the Final Four than the Superbowl or the World Series. I am rooting for the Arkansas Razorbacks. They've been my team since the beginning of the season. I love the way they play, but I know I'm pulling for them because of their coach, Nolan Richardson.

Nolan Richardson is black. I am sure that my affinity for Coach Richardson has its origins in my childhood experience as a little boy who sat down to televised sports events and pulled for the team with one black player, if there was one. Schools like Arkansas, Duke, Kentucky, and Louisville didn't even have Italian kids playing for them, much less black ones.

Now the racism in the N.C.A.A., and the racial symbols that signal its presence, are more subtle, more complex. Most of the players at "The Dance" are black, and there are a handful of black coaches.[35] In

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[32] *See, e.g.*, JULIE BLACKMAN, INTIMATE VIOLENCE 9 (1989) ("Those who have felt embarrassed after having had a personal problem revealed to them have an intuitive understanding of what it means for a problem to be 'taboo.'"); AMA COUNCIL ON SCIENTIFIC AFFAIRS, VIOLENCE AGAINST WOMEN 7 (1991); THE DARK SIDE OF FAMILIES: CURRENT FAMILY VIOLENCE RESEARCH 131 (D. Finkelhor et. al eds., 1983) (cited in Planned Parenthood v. Casey, 112 S. Ct. 2791, 2828 (1992)).

[33] *See Planned Parenthood v. Casey*, 112 S. Ct. at 2828 (describing domestic violence survivors' reluctance to report the offender).

[34] See WILLIAM STACEY & ANSON SHUPE, THE FAMILY SECRET: DOMESTIC VIOLENCE IN AMERICA 72 (1983) ("paradoxically, even if [the children] were abused themselves by their father, children may still love him").

[35] *See* Richard Lapchick, *Finally, A Small Step in the Right Direction*, SPORTING NEWS, Jan. 31, 1994, at 8.

the weeks leading up to the tournament, the Black Coaches Association, led by black basketball coaches like Richardson, threatened a boycott of the N.C.A.A.[36] They were calling attention to a number of N.C.A.A. policies and practices that they felt limited the opportunities of young black athletes.[37] These coaches are what my Dad used to call "race men." Being a "race man" has nothing to do with not liking white folks. It has a lot do with loving black folks and yourself. A. Philip Randolph and Thurgood Marshall were "race men." Clarence Thomas is not.

I am rooting for Arkansas because when I look at Coach Richardson, he reminds me of my Dad and Justice Marshall. He is a serious, dignified man who has risen to the top of his profession by virtue of his genius and his humanity. He cares deeply for the young men he teaches. He has high expectations for them and demands much of them. Richardson is a brilliant coach. He has one of the best win/loss records of any coach currently coaching in Division I basketball[38]—but you don't hear his name mentioned when people talk about great basketball minds. Sports writers call him a "good recruiter" and a "motivator." The kids on his teams are "great natural athletes." The T.V. commentators don't use words like "discipline" and "execution" when they talk about Richardson's team. Arkansas plays "street ball." Rick Petino's Kentucky team plays "up tempo."[39] Nolan Richardson knows that there is racial meaning in these words. This is why I am rooting for Arkansas.

The President of the United States is also watching the game. He's right there in the stands and he too is screaming for the Razorbacks. The week before, Bill Clinton was on the cover of Sports Illustrated in an Arkansas sweatshirt. A long story in the magazine described how the "first fan" sits and screams at the T.V. set when his beloved Hogs are playing.[40]

The final buzzer sounds. Arkansas has won. The arena in Dallas is in pandemonium and the nation's Chief Executive is walking briskly to mid-court to meet Coach Nolan Richardson. He gives the coach a

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[36] *See* Gene Wojciechowski, *BCA Could Call Timeout During the Tournament*, SPORTING NEWS, Mar. 28, 1994, at 47; Steve Berkowitz, *Viewpoints Face Different Directions: Boycott Highlights Gap*, WASH. POST, Jan. 14, 1994, at C6; Malcolm Moran, *Boycott Threat Reflects Power Struggle in Colleges*, N.Y. TIMES, Jan. 13, 1994, at B9.

[37] *See* Lapchick, *supra* note 35, at 8 (discussing the various issues raised by the black coaches).

[38] *See* Michael Wilbon, *Arkansas' Coach is No Pig in Poke*, WASH. POST, March 27, 1994, at D9.

[39] *Id.*; *see also* Alexander Wolff, *Razor Sharp*, SPORTS ILLUSTRATED, Apr. 11, 1994, at 20.

[40] *See* Alexander Wolff, *The First Fan*, SPORTS ILLUSTRATED, Mar. 21, 1994, at 24.

two-handed high five, bumping his chest in a moment of spontaneous, joyful exhilaration, and then, in full view of the Reunion Arena and millions of television viewers, the two men hug, a bear hug.

I am not feeling exhilarated. I'm feeling conflicted. Happy for the Hogs. Happy for their strong, dignified black coach. But I am not feeling happy for the country or for the state of race relations. I am trying to understand why this is so. After all, isn't this the scene I dreamt of when I was a kid searching for that one black ballplayer on the screen? Isn't it the scene that Charles Houston and Thurgood Marshall might have envisioned when they began the long line of litigation that culminated in *Brown v. Board of Education*? Isn't this the scene we imagined as we sat in and went to jail so that black and white young people could play on the same basketball courts and cheer in the same stands in arenas in Dallas, Atlanta, and Charlotte?

I'm feeling conflicted because I know it's more complicated than that. And I'm feeling empathy for Nolan Richardson because I'm sure he knows it too. This scene *looks* like a color-blind world, and I think maybe in the brief moment of that two-handed-high-five Bill Clinton believes it really is. But my gut is telling me I know better, and so is Coach Richardson's. What if Coach Richardson were to ask the President to support the Black Coaches Association in the scholarship dispute? What if the black players on both teams had raised black-gloved fists above their heads during the playing of the national anthem[41] to protest the fact that blacks are unemployed at two and one-half times the rate of whites, or that blacks are three times more likely to have income below the poverty level? Would it still look like a color-blind world?

The President's hug reminds me of my friend Lani Guinier. I am thinking of the now famous picture of the President and his wife at her wedding. The story of the withdrawal of Professor Guinier's nomination to the post of Assistant Attorney General for Civil Rights is an ideal case history for an epidemiologist studying the phenomena of color-blindness and taboo.[42] A cartoon by Village Voice[43] cartoonist Mark Alan Stamaty captures the essence of this case.

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[41] Symbolically protesting American racism during the 1968 Olympic Games, two African-American athletes, Tommy Smith and John Carlos, raised black-gloved fists high above their bowed heads during the playing of the United States national anthem at their medal ceremony.

[42] *See* Lani Guinier, *Who's Afraid of Lani Guinier*, N.Y. TIMES MAG., Feb. 27, 1994, at 41 (discussing the events leading up to Clinton's withdrawal of Guinier's candidacy for assistant attorney general of the Civil Rights Division).

[43] Reprinted with permission of cartoonist Mark Alan Stamaty, WASH. POST, MAR. 28, 1994, at A21.

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WASH. POST, MAR. 28, 1994, at A21

The cartoonist is a contributor to the Village Voice.

Professor Guinier's work embraces the ideal of color-blindness, where that ideal means full recognition of our shared humanity, but she refuses to ignore the continuing presence of racial subordination. She wanted to talk honestly about the disease she saw in the American family.[44] She refused to participate in the collective denial that is represented by the Supreme Court's opinion in the *Croson* case and Clinton's hug at mid-court. She broke the taboo that says thou shalt not speak of the disease when you see it. And so she was sanctioned: called "a madwoman" and "loony Lani," "left wing extremist," and "quota queen."[45]

What makes Stamaty's cartoon so brilliant, so funny and sad, is that it captures the essence of denial. The character who is shouting down Professor Guinier is depicted in a way that calls to mind a spoiled child. He is behaving the way children do when, in a quite self-conscious way, they don't want to hear what is being said to them. If they just shout something else loud enough, something like "liar, liar, pants on fire," they won't have to hear the bad news about their own behavior.

In this classic form of denial, reality is turned on its head. The individual who calls our racism to our attention is called a racist. Her refusal to participate in our charade, that the ideal of color-blindness is present reality, is asserted as conclusive evidence that she does not believe in the ideal. She is silenced, depicted as "loony," as "outside the mainstream." Thus the illusion created by denial is maintained. The President participated in this denial and in the enforcement of the taboo when he claimed he was withdrawing Professor Guinier's nomination, not in response to right-wing political pressure, but as a matter of principle, because, he found her ideas "anti-democratic."[46] By calling attention to the continued existence of racialized politics, Guinier had

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[44] *See* Guinier, *supra* note 42, at 43–44. Guinier writes, "The American people needed to move beyond . . . racial polarization. We should not be afraid of speaking directly to the continuing problems that our racial history creates for the civic life of our country. Silence won't make the problem go away." *Id.*

[45] The New Yorker chronicled some of the attacks on Professor Guinier: the Wall Street Journal described her as one of "Clinton's Quota Queens;" The U.S. News & World Report asserted that Guinier "does not share the goal of a colorblind society. She is not an integrationist;" The New York Times reported that Guinier stands for "racial polarization" and for "setting black and white politically and legally apart;" The New York Post concluded that she is a "hard-left extremist;" The New Republic wrote that Guinier is "a firm believer in the racial analysis of an irreducible, racial 'us' and 'them' society." *Comment: Idea Woman*, NEW YORKER, June 14, 1993, at 4.

[46] *See Text of President Clinton's Comments on Withdrawal of Guinier Nomination*, WASH. POST, June 4, 1993, at A10 [hereinafter *Clinton Text*]; Dan Balz, *Decision Played Out as a Painful Rerun: For the President, Latest Embarrassment is Both Personal and Political*, WASH. POST, June 4, 1993,

broken the taboo. Clinton said that when he nominated her he hadn't carefully read her work.[47] Now he had read it and discovered that her views on race conscious remedies for voting rights violations were inconsistent with his belief in a color-blind democracy. It was as if he were saying, "Look at the wedding picture. I thought she was color-blind like me."

* * *

It is mid-March, the first sunny, warm day after a long, hard winter. My friend Stephen Arons is visiting me in Washington. We are walking in Rock Creek Park with my three-month old daughter, Kimiko, and my dog, Maceo. Our conversation is the intense, intimate, truth-speaking talk that makes one thankful for good friends. We speak of siblings and parents, of grown children and this new baby in the stroller, of marriages past and present, of seders and baptisms, of Hebron[48] and Crown Heights,[49] of Dr. Baruch Goldstein[50] and Minister Louis Farrakhan.[51] There is no color-blindness in this conversation, no denial, no taboo.

Steve asks me if I have thought about how I will handle the questions about Farrakhan which he thinks will inevitably be asked when I give this talk at Brandeis University. I smile at my good Jewish friend. I know that he feels in some way responsible for me, having suggested my name to the organizers of the Brandeis lecture. I am appreciative of and amused by his concern. I also know that he is right to anticipate the land mines that rest half-buried in the complex confluence of America's racism and its anti-semitism.

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at A1; David Von Drehle, *Lani, We Hardly Knew Ye: The Lawyer Who Burned Briefly—But Too Brightly For Her Own Good*, WASH. POST, June 4, 1994, at C1.

[47] *See Clinton Text*, *supra* note 46, at 10 ("At the time of the nomination, I had not read her writings. In retrospect, I wish I had.").

[48] On February 25, 1994, a Jewish settler, Dr. Baruch Goldstein, entered an Islamic holy site in Hebron and gunned down twenty-nine Muslim worshippers. The Hebron massacre led to a new cycle of violence between Jews and Muslims in Israel and the occupied territories. *See* David Hoffman, *Hebron Massacre Triggers Day of Bloodshed*, WASH. POST, Feb. 26, 1994, at A1.

[49] On August 19, 1991 a seven-year-old black boy, Gavin Cato, was killed when a car traveling in a Hasidic Jewish motorcade lost control in Crown Heights, New York. A Hasidic operated ambulance arrived at the accident scene, picking up only the Hasidic driver, and leaving the boy behind. A group of outraged black youths attacked and killed a Hasidic rabbinical student, Yankel Rosenbaum. The lingering violence and tension between blacks and Jews in Crown Heights has come to symbolize the deteriorating relationship between blacks and Jews in American society. *See* Joe Sexton, *Crown Hts. Tension Persists Despite Healing Effort*, N.Y. TIMES, Jan. 27, 1994, at A1.

[50] *See* Hoffman, *supra* note 48.

[51] Minister Farrakhan is the controversial leader of the Nation of Islam.

I know that on this dangerous ground, where all of us are most vulnerable, even good people with a common cause have great difficulty trusting each other enough to speak with candor and to listen with courage and care. I know that many of the people in my audience will want to hear me condemn Farrakhan, and that no matter how unequivocally I condemn him, it will not be enough. I fear that if I reveal my tentative efforts to understand how white supremacy is internalized by its victims, and manifests itself in African-American anti-semitism, I will be misheard by both Jews and blacks. I know that I will be quoted out of context by the press. I am afraid that when the name Farrakhan is uttered all else will be forgotten, all other words and ideas drowned in the roar of hateful words that have been hurled back and forth between my people and Steve's. I tell Steve, "I'm not sure what I'll do. I'll have to see how brave I'm feeling."

Well, I was not feeling all that brave, but my speech called on all of us to be courageous, to break the taboo against speaking of what we see. And as Paulo Freire has said, "there is no true word that is not at the same time praxis."[52] There is much in the way we talk, and do not talk, about anti-semitism among blacks and racism among Jews that is illustrative of both my old lesson about recognizing racism as a disease that infects us all, and my new lesson about the epidemiological phenomena of denial and taboo. I want to speak briefly of these.

The first is that anti-semitism, like white supremist racism, is best understood as a societal disease that infects us all. Although they have different historical origins, the ways that African Americans and Jewish Americans experience these closely related illnesses are uniquely shaped by this country's history and culture.

All of us must condemn outbreaks of anti-semitism. We must oppose the neo-Nazi voices of Khalid Muhammad *and* David Duke. Blacks must be particularly vigilant and outspoken when anti-semitism raises its head in our communities, even as Jews must be in the vanguard of the anti-racist struggle when members of the Jewish community are complicit in the American racial caste system.

But I am concerned that the persistent intensity of the call for black leaders to condemn Farrakhan may be indicative of our need to think about anti-semitism in the same false way that the law thinks about racism. This false way of thinking is seductive because it seems to offer a simple solution. If we can isolate and condemn the self-professed anti-semite, if we can impose a condemnation litmus test on

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[52] PAULO FRIERE, PEDAGOGY OF THE OPPRESSED 75 (1992) (discussing praxis in the context of revolutionary education).

black leaders, we can be done with it. Anti-semitism, like racism, is placed outside of ourselves and located in the "guilty other guy." We tell ourselves that most good Americans are not anti-semitic, that there is no internalized, self-inflicted anti-semitism among Jews. "If some of my best friends are Jews," we say, "how can you accuse me of anti-semitism?" Again, I am not saying we should not condemn the self-professed bigot and hold him responsible for his actions. I am saying it is not enough.

The persistent calls for condemnation may also be examples of my new lesson at work. They may be a mechanism by which we deny the continued existence of widespread anti-semitism in the black community. They may be a way of avoiding the harder conversations about the complex connections between white racism and black anti-semitism. This may be a symptom of color-blindness— acting as if we could talk about anti-semitism in this country without talking about white racism. When I am asked about Farrakhan and people can hear nothing but the required condemnation, I feel the taboo against honest talk of racism at work. It is also a taboo against honest talk of anti-semitism.

* * *

One last story: it is February of 1994. I am reading the Washington Post. A white sixth grade teacher in the D.C. suburb of Montgomery County writes about his experience with a class of twenty-nine students, of whom all but two were black and Hispanic, and all but three from poor families.[53] The teacher had shown a film based on a Langston Hughes story about a young black boy who attempts to steal the purse of an elderly black woman. The boy fails and the woman takes him into her home, where she proceeds to apply generous amounts of love and understanding to his wounds. The story's lesson is that love is powerful medicine and that all of us have it within us to be better people. The teacher describes the discussion after the film:

> I turned on the lights and asked if anyone wanted to share their reactions to the film. An 'A' student, who is black, raised his hand and said, 'You knew something bad was going to happen when it started. As soon as you see a black boy you know he's gonna do something bad.'

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[53] Marc Elrich, *The Stereotype Within: Why Students Don't Buy Black History Month*, WASH. POST, Feb. 13, 1994, at C1. The following text appeared in this article.

Me: 'Just because he's black, he's bad?'

Student: 'Everybody knows that black people are bad. That's the way we are.'

I was becoming a little horrified, both at the answer and that it would be coming from him, of all students. I counted on the class to rebuke him. To provoke a class response, I restated his proposition that 'Black people are bad' and asked who agreed with that. Twenty-four of twenty-nine hands went up.

Maybe I was misunderstanding the use of *bad.* 'Do you mean *cool* or *tough* or *hot*? Or do you mean *bad* as in *not good* or *evil*?' I asked. One of the best female students in the class assured me she meant the latter, as did everyone else.

In her view, and in the view of most of my class, black people are determined inherently, genetically, naturally, to be bad people. To my students, it wasn't a matter of choice, or upbringing, but simply a racial attribute. They had no doubt in this, nor was this their sole racial stereotype. As the discussion continued a disturbing picture of their self-image emerged. All of the following comments received a near consensus in the class:

—Blacks are poor and stay poor because they're dumber than whites (and Asians).

—Black people don't like to work hard.

—Black people have to be bad so they can fight and defend themselves from other blacks.

—As students, they see their badness as natural. They don't mean any disrespect to me personally: It's 'just how we are.'

—They don't need to work hard because it won't matter in the end.

—Black men make women pregnant and leave.

—Black boys expect to die young and unnaturally.

—White people are smart and have money.

—Asians are smart and make money.

—Asians don't like blacks or Hispanics.

—Hispanics are more like blacks than whites. They can't be white so they try to be black.

—Hispanics are poor and don't try hard because, like blacks, they know it doesn't matter. They will be like blacks because when you're poor you have to be bad to survive.

—Black kids who do their school work and behave want to be white. White kids who do poorly or dress cool, want to be blacks.

Hispanic kids want to be black because they aren't smart (like whites).[54]

This is the strange and awful fruit of segregation 1990s style. The injury done to these children is the same injury identified in *Brown.* One does not need Kenneth Clark's doll tests to see that the race-coded messages of American culture have "affected their hearts and minds in a way unlikely ever to be undone."[55] And yet, if one of these children brought suit under the Equal Protection Clause, the Court would likely say, "There is no direct evidence before us that the school district has discriminated against these children."[56]

Before *Brown,* there were signs on lunch counters, drinking fountains, and bathrooms that said "colored" and "white." Before we declared ourselves color-blind, black parents took their children by the hand. They pointed to the signs, to the minstrel shows and the Little Black Sambos and said to their children, "This is not about you. It is the white man's problem that he needs to think of you as less than he. This is the white man's way of keeping you in your place, of making sure you do not get your fair share. This is what he says you are, but you are not this person."

In 1994 the printed signs are gone, but the color-coded messages remain. The children see these messages all around them, but the Supreme Court, the Congress, the President, the academy, the banks, and the businesses claim they see no color there. They are color-blind. They deny society's racism and forbid honest talk about it.

If we are to fight this disease, if we are to stop its spread, we must cease denying the reality of racism. We must break the taboo. We must be brave enough to recognize our own infection and we must engage in honest public talk about what we know and see.

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[54] *Id.*

[55] "To separate them [black children] from others of similiar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone". Brown v. Board of Education of Topeka, 347 U.S. 483, 494 (1954).

[56] *See Croson,* 488 U.S. at 480. (holding that there was "no direct evidence of race discrimination" against minority subcontractors).